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Attorneys for Defendants
KIEWIT PACIFIC CO., PETER KIEWIT SONS', INC.
HEALTH AND WELFARE PLAN,
PETER KIEWIT SONS', INC, JOHN JANSEN,
MICHAEL PHELPS and JANE SEWELL

UNITED STATES DISTRICT COURT

IN AND FOR THE NORTHERN DISTRICT OF CALIFORNIA

RICHARD A. NOBLE and CHARLENE R.
NOBLE,

Plaintiffs,

v.

KIEWIT PACIFIC CO., a Delaware
corporation; LIFE INSURANCE COMPANY
OF NORTH AMERICA, a Pennsylvania
corporation; PETER KIEWIT SONS' INC.
HEALTH AND WELFARE PLAN; PETER
KIEWIT SONS' INC., a Delaware corporation;
JOHN JANSEN, an individual; MICHAEL
PHELPS, an individual; and JANE SEWELL,
an individual,

Defendants.

Case No. 08-CV-00666-SI

**DEFENDANTS' OPPOSITION TO
PLAINTIFF'S MOTION TO SHORTEN
TIME TO HEAR MOTION FOR
EXPEDITED DEPOSITION OF
RICHARD NOBLE**

Date:

Time:

Judge: Hon. Susan Illston

Courtroom: 10, 19th Floor

Pursuant to Northern District Civil Local Rule 6-3(c), Defendants KIEWIT PACIFIC CO., PETER KIEWIT SONS', INC. HEALTH AND WELFARE PLAN, PETER KIEWIT SONS', INC, JOHN JANSEN, MICHAEL PHELPS and JANE SEWELL ("Defendants") hereby oppose Plaintiffs RICHARD A. NOBLE's and CHARLENE R. NOBLE's Motion to Shorten Time to Hear Motion for Expedited Deposition of Richard Noble.

1 **A. Plaintiffs’ fail to show good cause for shortened time.**

2 Northern District of California Local Rule 7-2(a) provides that a hearing on a written
3 motion must be set at least thirty-five days after service of the notice. The Court may order that
4 the time be shortened for notice of a motion only when good cause is shown. *United States v.*
5 *Fitch*, 472 F.2d 548, 549, n. 5 (9th Cir. 1973). While there are many legitimate reasons for
6 asking the Court to hear a motion on shortened time (for example, when a dispute arises after the
7 35-day notice period), Plaintiffs in this case have not set forth a legitimate reason and fail to
8 show good cause to shorten time to hear Plaintiffs’ motion to expedite Plaintiff Richard Noble’s
9 deposition. As discussed in detail in Defendants’ opposition to Plaintiffs’ underlying motion,
10 Plaintiffs have provided no evidence warranting the Court’s issuance of an order on shortened
11 time forcing Defendants to take Mr. Noble’s deposition. Plaintiffs must demonstrate substantial
12 harm or prejudice. N.D. Local Rule 6-3(a)(3)(emphasis added). A declaration from a doctor
13 indicating that Plaintiffs deposition “should be taken as soon as possible” does not justify an
14 expedited motion forcing Defendants to take Plaintiff’s deposition without preparation and
15 during a time period in which counsel for Defendants is unavailable.

16 **B. Plaintiffs’ fail to meet and confer in good faith as required by Local Rules**
17 **6-3(a) and 37-1(a).**

18 Local Rule 6-3(a) requires Plaintiffs describe their efforts to obtain a stipulation to
19 shorten time to hear the motion, which references the meet and confer requirements set forth in
20 Local Rule 37-1(a). Plaintiffs’ counsel fails to show he engaged in a *good faith* effort to meet
21 and confer.

22 Plaintiffs correctly recite that, on January 31, 2008, three days after filing their
23 Complaint, they notified Kiewit’s in-house counsel of their concerns regarding Mr. Noble’s
24 health. Declaration of Kari Erickson in Support of Defendants’ Opposition to Expedited Motion
25 and Motion for Expedited Deposition, filed herewith (“Levine Dec.”) ¶ 21. Kiewit’s in-house
26 counsel told Plaintiffs’ counsel to contact Defense counsel who they had retained to represent
27 them. Plaintiffs’ counsel emailed Defense counsel and requested that Defense counsel call him
28 by the close of business the next day, February 1, 2008 or they would petition the Court for an

1 expedited deposition as early as the following week (February 4, 2008). This was Plaintiffs'
2 counsel's first unreasonable 24 hour threat.

3 Surprised at the news of Mr. Noble's severe illness, since just weeks before Plaintiffs'
4 counsel indicated Mr. Noble was ready to return to work, on February 1, 2008 as demanded,
5 Defense counsel contacted Plaintiffs' counsel the next day and requested medical documentation
6 of Mr. Noble's current prognosis and life expectancy to support Plaintiffs' counsel's
7 representation that Mr. Noble had only a month or two to live. Levine Dec. ¶ 22. Despite
8 demanding 24 hour responses from counsel for Defendants, and despite the pressing need
9 alleged, Plaintiffs' counsel did not respond for six days. After several days had passed with no
10 word from Plaintiffs' counsel, Defense counsel reminded Plaintiffs' counsel regarding the need
11 for medical documentation. It was not until after 3:00 p.m. on February 7, 2008, that counsel
12 emailed the declaration of Mr. Noble's oncologist. Levine Dec. ¶ 23. Along with the doctor's
13 declaration, Plaintiffs' counsel made his second **unreasonable 24 hour demand**. Despite his
14 having taken six days to respond to Defense counsel, Plaintiffs' counsel demanded within 24
15 hours a stipulation that Mr. Noble's deposition would be taken **on dates which Defense counsel**
16 **had previously advised she was out-of-state and unavailable**. Without so much as a phone call
17 to discuss the issue, Plaintiffs filed the instant motion. Levine Dec. ¶ 24. This is hardly a "good
18 faith" meet and confer attempt.

19 Although Plaintiffs' counsel never did attempt to discuss the issue before filing the
20 motion, given that Mr. Noble's doctor's declaration does not support counsel's representation
21 that Mr. Noble has a month or two to live, and given the extreme prejudice to the Defendants
22 which would be occasioned by an expedited deposition before any discovery and without the
23 benefit of any of Mr. Noble's documents or medical records (and before pleading errors and
24 standing issues are addressed by the court), Defendants should not be required to acquiesce and
25 take the deposition on the dates requested. Levine Dec. ¶ 25.

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1 **C. Plaintiffs request is unreasonable and prejudicial.**

2 Plaintiff's request to shorten time is unreasonable, was made without any "good faith"
3 meet and confer and lacks good cause and should therefore be denied.

4 DATED: February 12, 2008

SEYFARTH SHAW LLP

6 By /s/ Adrienne E. Nelson

Adrienne E. Nelson

Attorneys for Defendants

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